

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

BARBARA C. ROBINSON

PLAINTIFF

VERSUS

CIVIL ACTION NO. 1:10cv260-LG-RHW

**ALEXANDER DOTT and
KYLA GUTIERREZ**

DEFENDANTS

PROPOSED FINDINGS OF FACT AND RECOMMENDATIONS

This case is before the Court *sua sponte*, after review of the pleadings on file. Plaintiff filed this action June 10, 2010. Rule 4(m), *Federal Rules of Civil Procedure*, requires service of the summons and complaint upon defendants within 120 days after the filing of the complaint, which would have been October 8, 2010. In [6] an order entered July 21, 2010, the Court advised Plaintiff that it is her responsibility to prosecute her case and that the case could not proceed until service of a summons and complaint on the defendant(s); that it is Plaintiff's responsibility to prepare the summons to be served on each defendant and to present the process to the clerk for issuance. The Court referred Plaintiff to Rule 4(b), *L.U.Civ.R.* and the provisions of Rule 4, *Fed.R.Civ.P.*, for information regarding service of the summons and complaint.

On October 8, 2010, Plaintiff filed [12] a motion for additional time to serve process, which the Court granted by text order entered October 13, 2010, granting Plaintiff until December 13, 2010 to serve the defendants with the summons and complaint. Plaintiff did not serve process by December 13, 2010. To date, the docket reflects that Plaintiff has never requested issuance of process as required. Plaintiff has done nothing since October 18, 2010 to prosecute this case. On December 15, 2010, the Court entered [14] an order requiring Plaintiff to show cause in writing by December 30, 2010 why this case should not be dismissed for

Plaintiff's failure to serve the summons and complaint. Plaintiff filed no response to the Show Cause Order.

RECOMMENDATION

Based on the foregoing, it is the opinion of the undersigned that Plaintiff has failed to comply with the Rules governing her case, and failed to respond to the Court's order to show cause why the case should not be dismissed. Accordingly, the United States Magistrate Judge recommends that Plaintiff's cause of action be dismissed without prejudice for failure to serve process upon the defendants as required by Rule 4, *Fed.R.Civ.P.*

NOTICE OF RIGHT TO APPEAL/OBJECT

Pursuant to *L.U.Civ.R.* 72(a)(3), any party who objects to this Report and Recommendation must, within fourteen (14) days after being served a copy of the Report and Recommendation, file with the Clerk of this Court her written objections to the Report and Recommendation, and must submit them to the assigned District Judge. An objecting party must specifically identify the findings, conclusions, and recommendations to which she objects; the District court need not consider frivolous, conclusive, or general objections. A party who fails to file written objections to the proposed findings, conclusions, and recommendations within fourteen (14) days of being served a copy shall be barred, except upon grounds of plain error, from attacking on appeal any proposed factual finding or legal conclusion accepted by the District Court to which she did not object. *Douglass v. United Services Automobile Association*, 79 F.3d 1415, 1428-29 (5th Cir. 1996).

Signed, this the 14th day of January, 2011.

/s/ Robert H. Walker

ROBERT H. WALKER
UNITED STATES MAGISTRATE JUDGE